



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 27, 1997

Ms. Jennifer D. Soldano
Associate General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Bldg.
125 East 11th Street
Austin, Texas 78701-2483

OR97-2384

Dear Ms. Soldano:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 110060.

The Texas Department of Transportation (the "department") received a request for "any and all asbestos testing and or removal documentation that pertains to the DOT office located at F.M. 140 East Pearsoll, Texas 78065 (Pearsoll Area Office)." In response to the request, you submitted to this office for review the information you assert is responsive. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.¹

Section 552.103(a), known as the litigation exception, excepts from required public disclosure information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and,

¹We note that if the requested records overlap with any information which was the subject of our previous ruling in Open Records Letter No. 97-1575 (1997), then the department should withhold or release this information as directed in that ruling. A copy of that ruling is enclosed for your convenience.

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection

When asserting section 552.103(a), a governmental body must establish that the requested information relates to pending or reasonably anticipated litigation. Thus, under section 552.103(a) a governmental body's burden is two-pronged. The governmental body must establish that (1) litigation is either pending or reasonably anticipated, and that (2) the requested information relates to that litigation. *See Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The department must meet the two-pronged burden of section 552.103 in order to withhold the submitted records.

You state that the requested information relates to a "class action lawsuit." In this instance, based on the information submitted to this office, you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a). Therefore, the requested information may be withheld pursuant to section 552.103.²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Sam Haddad", written over a large, stylized circular flourish.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/rho

Ref.: ID#110060

²However, if the opposing parties in the litigation have seen or had access to the requested information, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation is concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Enclosures: Submitted documents
Open Records Letter No. 97-1575 (1997)

cc: Mr. Charles W. Mick, Investigator
AIG Claim Services, Inc.
Investigative Services Division
675 Bering Drive, 3rd Floor
Houston, Texas 77057
(w/o enclosures)